



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO RIVERSIDE MIDDLE PENINSULA HOSPITAL, INC. D/B/A Riverside Walter Reed Hospital Registration Number 40611

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Riverside Middle Peninsula Hospital, Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable Permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means Riverside Walter Reed Hospital, Inc., a 67-bed medical/surgical acute care hospital, located at 1719 Hospital Drive in Gloucester, Virginia.
5. "FCE" means a full compliance evaluation by DEQ staff.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a Consent Order or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means State Operating Permit, Registration No. 40611, to operate a medical/surgical acute care hospital. The Permit was issued under the Virginia Air Pollution Control Law and the Regulations to Riverside on June 4, 2002.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Riverside" means Riverside Middle Peninsula Hospital, Inc., d/b/a Riverside Walter Reed Hospital, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Riverside Middle Peninsula Hospital is a "person" within the meaning of Va. Code § 10.1-1300.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Riverside owns and operates the Facility in Gloucester, Virginia. The Facility is a 67-bed medical/surgical acute care hospital. The Facility uses three No. 2 distillate oil-fired boilers to provide steam for heat and sterilization purposes. There is the potential to emit nitrogen oxides as NO₂ from the operation of the three boilers.
2. DEQ issued a State Operating Permit (Permit), Registration No. 40611, to Riverside on June 4, 2002. The Permit limits the emissions of NO₂ to less than 0.6 tons/yr, and the Facility was classified as a synthetic minor.

3. On June 22, 2015, Department staff conducted a PCE of the Facility. Based on the PCE, the Permit and Facility records, Department staff made the following observation:
 - a) Facility records for the Annual Update for calendar year 2014 reported 0.758 tons of NO₂ emissions from the operation of the 3 boilers (Unit Ref. # 1, 2, and 3).
 - b) Facility records for the Annual Update for calendar year 2013, reported 0.730 tons of NO₂ emissions from operation of the 3 boilers (Unit Ref. # 1, 2, and 3).
4. Condition No. 8 of the Permit states, "Boiler Emissions Limits.....Emissions from the operation of the 3 boilers (Unit Ref. # 1, 2, and 3) shall not exceed the limits specified below.....Nitrogen Oxides as NO₂: 0.6 tons/year," (9 VAC 5-50-260 and 9 VAC 5-80-850)
5. On June 24, 2015, DEQ compliance staff conducted a FCE of the Facility and made the following observations:
 - a) Facility records showed 82,997 gallons of No. 2 distillate oil fuel usage in the 3 boilers (Unit Ref. # 1, 2, and 3) during the most recent 12-month period (June 2014 – May 2015).
 - b) In Facility records of the Annual Update for calendar year 2014, the Facility reported 75,782 gallons of No.2 distillate oil consumed in the 3 boilers (Unit Ref. # 1, 2, and 3).
 - c) In Facility records of the Annual Update for calendar year 2013, the Facility reported 73,035 gallons of No. 2 distillate oil consumed in the 3 boilers (Unit Ref. # 1, 2, and 3).
6. Condition No. 4 of the Permit states that, "Fuel throughput..... The 3 distillate oil-fired boilers (Unit Ref.3 1, 2, and 3) combined shall consume no more than 60,000 gallons per year of #2 distillate oil calculated monthly as the sum of each consecutive period." (9 VAC 5-80-850)
7. On July 27, 2015, the Department issued Notice of Violation No. APRO000225-001, for the violation as described above.
8. On July 27, 2015, Riverside submitted an Air Permits Form 7 application seeking an amendment to the Permit to increase the requested throughput of fuel per year due to the increases in the Facility square footage, a generator replacement, and a steam boiler replacement.
9. On September 29, 2015, Department staff met with Riverside representatives to discuss the violation, including the corrective actions the company had taken.
10. Based on the results of the June 22, 2015 PCE, and the June 24, 2015 FCE, records review, and September 29, 2015 meeting with representatives of the Facility, the Board concludes that Riverside violated Condition No. 4 and 8 of the Permit as described above.

11. On July 29, 2015, Riverside completed the corrective actions by applying for an amended Permit. After DEQ evaluation of the permit application, the proposed project was determined to be exempt from the permitting requirements of Chapter 80, Article 6 of the VA Regulations for the Control and Abatement of Air Pollution. Riverside has made the corrective actions that demonstrate the violations described in Section C above, have been addressed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1309 and -1316, the Board orders Riverside, and Riverside agrees to:

1. Pay a civil charge of \$ 3,225 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Riverside shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Riverside shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Riverside, for good cause shown by Riverside, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.* after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Riverside admits the jurisdictional allegations, the findings of fact, and conclusions of law in this Order.
4. Riverside consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Riverside declares it has received fair and due process under the Administrative Process Act and Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend or enforce this Order.
6. Failure by Riverside to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Riverside shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Riverside shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Riverside shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Riverside. Nevertheless, Riverside agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Riverside has completed all of the requirements of the Order; or
 - b. Riverside petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Riverside.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Riverside from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Riverside and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Riverside certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Riverside to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Riverside.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Riverside Middle Peninsula Hospital, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 20th day of July, 2016.

A handwritten signature in blue ink, appearing to read "Michael P. Murphy", is written over a horizontal line.

Michael P. Murphy, Regional Director
Department of Environmental Quality

Riverside Middle Peninsula Hospital, Inc., voluntarily agrees to the issuance of this Order.

Date: 7/13/16 By: W. William Austin Jr. S. VP & CFO
(Person) (Title)
Riverside Middle Peninsula Hospital, Inc.

State of Virginia

City/County of Newport News

The foregoing document was signed and acknowledged before me this 13th day of
July, 2016, by W. William Austin Jr., who is
(name)

Senior Vice President/CFO of Riverside Middle Peninsula Hospital, Inc., on behalf of the
company.

Kelly A. Taylor
Notary Public

7528554
Registration No.

My commission expires: November 30, 2016

Notary seal:

